

2003

STATE OF NEBRASKA

**STATUTES RELATING TO
FUNERAL DIRECTORS, EMBALMING, AND CREMATION
FUNERAL ESTABLISHMENTS**

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



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71-197. Repealed. Laws 1980, LB 94, §19.

71-198 to 71-1,100. Transferred to sections 71-1304 to 71-1306.

71-1,101. Repealed. Laws 1993, LB 187, §39.

STATUTES PERTAINING TO THE PRACTICE OF FUNERAL DIRECTING AND EMBALMING

71-1301. Terms, defined. For purposes of sections 71-1301 to 71-1306 and 71-1326 to 71-1354, unless the context otherwise requires:

(1) Accredited school of mortuary science means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the department upon recommendation of the board;

(2) Apprentice means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer is responsible for all funeral assists and embalmings completed by the apprentice;

(3) Board means the Board of Funeral Directing and Embalming;

(4) Branch establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted;

(5) Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets;

(6) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(7) Department means the Department of Health and Human Services Regulation and Licensure;

(8) Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming. Any person who publicly professes to be a funeral director and embalmer or an apprentice is deemed to be practicing embalming. The performance of the following acts is also deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities;

(9) Funeral directing means (a) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, (b) providing for or maintaining a funeral establishment, or (c) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing;

(10) Funeral establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies;

(11) Licensee means a person licensed by the department as a funeral director and embalmer on or after January 1, 1994, or a person licensed as a funeral director or embalmer prior to January 1, 1994;

(12) Licensure examination means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination; and

(13) Supervision means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Source: Laws 1927, c. 167, § 92, p. 479; C.S.1929, § 71-1301; Laws 1931, c. 123, § 1, p. 355; C.S.Supp.,1941, § 71-1301; R.S.1943, § 71-194; Laws 1957, c. 293, § 1, p. 1052; R.S.1943, (1990), § 71-194; Laws 1993, LB 187, § 13; Laws 1996, LB 1044, § 557; Laws 1999, LB 828, § 152; Laws 2003, LB 95, § 35. Effective date August 31, 2003.

71-1302. Funeral directing and embalming; license; requirements. (1) On and after January 1, 1994, the department shall issue a single license to practice funeral directing and embalming to applicants who meet the requirements of this section. An applicant for a license as a funeral director and embalmer shall file with the department an application upon a form prepared by the department and shall:

(a) Present satisfactory proof that the applicant has earned the equivalent of sixty semester hours of college credit in addition to a full course of instruction in an accredited school of mortuary science. Such hours shall include the equivalent of

(i) six semester hours of English, (ii) six semester hours of accounting, (iii) eight semester hours of chemistry, (iv) twelve semester hours of a biological science relating to the human body, and (v) six semester hours of psychology or counseling; and

(b) Present proof to the department that he or she has completed the following training:

(i) A full course of instruction in an accredited school of mortuary science;

(ii) A twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska, which apprenticeship shall consist of arterially embalming twenty-five bodies and assisting with twenty-five funerals; and

(iii) Successful completion of the licensure examination approved by the board.

(2) Any person holding a valid license as an embalmer on January 1, 1994, may continue to provide services as an embalmer after such date. Upon expiration of such valid license, the licensee may apply for renewal thereof, and the department on the recommendation of the board shall renew such license to practice embalming. The recommendation of the board, the application, and the renewal fee shall be based on the requirements for renewal of such license in existence immediately prior to January 1, 1994.

(3) Any person holding a valid license as a funeral director on January 1, 1994, may continue to provide services as a funeral director after such date. Upon expiration of such valid license, the licensee may apply for renewal thereof, and the department on the recommendation of the board shall renew such license to practice funeral directing. The recommendation of the board, the application, and the renewal fee shall be based on the requirements for renewal of such license in existence immediately prior to January 1, 1994.

(4) The department on the recommendation of the board shall issue a single license to practice funeral directing and embalming to a person holding a valid license as an embalmer and a valid license as a funeral director on January 1, 1994, when such valid licenses expire. A licensee desiring to obtain a license under this subsection shall apply on forms prescribed by the department and pay a fee equal to the renewal fee for such license established by the department.

Source: Laws 1927, c. 167, §93, p. 480; C.S. 1929, §71-1302; Laws 1931, c. 123, §1, p. 355; Laws 1937, c. 155, §1, p. 612; C.S. Supp., 1941, §71-1302; R.S. 1943, §71-195; Laws 1955, c. 271, §1, p. 852; Laws 1986, LB 926, §43; Laws 1987, LB 473, §19; Laws 1988, LB 1100, §35; R.S. 1943, (1990), §71-195; Laws 1993, LB 187, §14. Operative date January 1, 1994.

71-1303. Examinations; requirements. When the applicant has satisfied the department that he or she either has completed a full course of instruction in an accredited school of mortuary science or has completed all but the final semester of such course, the applicant shall be eligible to take the national standardized examination. The applicant shall pass such examination before beginning his or her twelve-month apprenticeship or the final six months thereof. When the applicant has satisfied the department that he or she has the qualifications specified in section 71-1304, he or she shall be eligible to take the state jurisprudence and vital statistic forms examination. A grade of seventy-five or above on each part of the licensure examination shall be a passing grade.

Source: Laws 1927, c. 167, §94, p. 480; C.S. 1929, §71-1303; Laws 1931, c. 123, §1, p. 356; Laws 1937, c. 155, §2, p. 613; C.S. Supp., 1941, §71-1303; R.S. 1943, §71-196; Laws 1955, c. 271, §2, p. 853; R.S. 1943, (1990), §71-196; Laws 1993, LB 187, §15. Operative date January 1, 1994.

71-1304. Apprenticeship; registration; examination. (1) Before beginning an apprenticeship, an applicant shall register with the department on a form provided by the department for that purpose. The applicant shall show that he or she has completed thirty-nine of the sixty hours required in subdivision (1)(a) of section 71-1302. The applicant may complete the twelve-month apprenticeship in either a split apprenticeship or a full apprenticeship as provided in this section.

(2) A split apprenticeship shall be completed in the following manner: (a) Registration with the department to complete a six-month apprenticeship prior to attending an accredited school of mortuary science, which registration shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period; (b) successful completion of a full course of study in an accredited school of mortuary science; (c) successful passage of the national standardized examination; and (d) registration with the department to complete the final six-month apprenticeship, which registration shall be valid for six months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous six-month period.

(3) A full apprenticeship shall be completed in the following manner: (a) Successful completion of a full course of study in an accredited school of mortuary science; (b) successful passage of the national standardized examination; and (c) registration with the department to complete a twelve-month apprenticeship. This registration shall be valid for twelve months from the date of issuance and shall not be extended by the board. The apprenticeship shall be completed over a continuous twelve-month period.

(4) The department may, on the recommendation of the board, adopt and promulgate rules and regulations for apprentices in funeral directing and embalming.

Source: Laws 1927, c. 167, § 96, p. 481; C.S.1929, § 71-1305; Laws 1931, c. 123, § 1, p. 357; Laws 1937, c. 155, § 3, p. 613; C.S.Supp.,1941, § 71-1305; R.S.1943, § 71-198; Laws 1986, LB 926, § 44; Laws 1987, LB 473, § 20; Laws 1988, LB 1100, § 36; R.S.1943, (1990), § 71-198; Laws 1993, LB 187, § 16; Laws 2003, LB 242, § 97. Operative date July 1, 2004.

71-1305. Teaching and demonstration; use of dead human bodies. The board shall have the privileges extended to them for the use of bodies for dissection, demonstrating, and teaching under the requirements of the State Anatomical Board for the distribution and delivery of dead human bodies.

Source: Laws 1927, c. 167, § 97, p. 481; C.S.1929, § 71-1306; Laws 1931, c. 123, § 1, p. 357; C.S.Supp.,1941, § 71-1306; R.S.1943, § 71-199; R.S.1943, (1990), § 71-199; Laws 1993, LB 187, § 17; Laws 1999, LB 828, § 153. Effective date August 28, 1999.

71-1306. Violations; evidence. The finding of chemical substances, fluids, or gases ordinarily used in embalming or any trace thereof in a dead human body, the use of which is prohibited except by a licensed funeral director and embalmer, or the placing thereof upon a dead human body by other than a licensed funeral director and embalmer shall constitute prima facie evidence of the violation of sections 71-1301 to 71-1306.

Source: Laws 1927, c. 167, §98, p. 481; C.S. 1929, §71-1307; Laws 1931, c. 123, §1, p. 357; C.S. Supp., 1941, §71-1307; R.S. 1943, (1990), §71-1,100; Laws 1993, LB 187, §18. Operative date January 1, 1994.

71-1307 to 71-1324. Repealed. Laws 1957, c. 295, §15.

71-1325. Repealed. Laws 1993, LB 187, §39.

71-1326. Funeral directors and embalmers and funeral establishments; rules and regulations. The department, upon recommendation of the board, may adopt and promulgate such rules and regulations as may be reasonable and proper for the purpose of carrying into effect sections 71-1301 to 71-1354, including rules and regulations for licensure, license renewal, discipline of licenses, and reinstatement of licenses.

Source: Laws 1957, c. 295, § 2, p. 1060; Laws 1980, LB 94, § 5; Laws 1991, LB 10, § 4; Laws 1993, LB 187, § 19; Laws 2002, LB 1021, § 54. Operative date January 1, 2003.

71-1327. Funeral establishment; application for license; form; qualifications; relocation; change of manager; change of name. (1) The application for an initial funeral establishment license shall be in writing and verified on a form provided by the department. In order for a funeral establishment to be licensed, it shall employ as its manager a licensed funeral director and embalmer who shall be responsible for all transactions conducted in the funeral establishment, except that any person holding a valid license as a funeral director on December 31, 1993, may serve as a manager of a funeral establishment. The manager shall maintain and operate the funeral establishment in accordance with all laws, rules, and regulations relating thereto.

(2) A license to operate a funeral establishment may be granted by the department upon the recommendation of the board. If the applicant for a funeral establishment license proposes to operate more than one establishment, a separate application and fee shall be required for each location.

(3) A funeral establishment desiring to relocate shall make application therefor on a form provided by the department at least thirty days prior to the designated date of such change in location. The application for relocation shall be accompanied by the required fee.

(4) A funeral establishment desiring to change its manager shall make application on a form provided by the department at least fifteen days prior to the designated date of such change, except that in the case of death of a manager, the application shall be made immediately following such death. The application shall be accompanied by the required fee. No license shall be issued under this subsection by the department until the original license has been surrendered.

(5) A funeral establishment desiring to change its name shall request such change on a form provided by the department at least thirty days prior to the designated change in name.

Source: Laws 1957, c. 295, § 3, p. 1060; Laws 1973, LB 515, § 15; Laws 1980, LB 94, § 6; Laws 1986, LB 926, § 49; Laws 1987, LB 473, § 37; Laws 1992, LB 1019, § 61; Laws 1993, LB 187, § 20; Laws 2003, LB 242, § 98. Operative date July 1, 2004.

71-1327.01. Branch establishment; application for license; form; qualifications; relocation; change of manager; change of name. (1) The application for an initial branch establishment license shall be in writing on a form provided by the department.

(2) A license to operate a branch establishment may be granted by the department upon the recommendation of the board. If the applicant for a branch establishment license proposes to operate more than one branch establishment, a separate application and fee shall be required for each location.

(3) A branch establishment desiring to relocate shall make application therefor on a form provided by the department at least thirty days prior to the designated date of such change in location. The application for relocation shall be accompanied by the required fee.

(4) A branch establishment desiring to change its manager shall make application on a form provided by the department at least fifteen days prior to the designated date of such change, except that in the case of death of the manager, the establishment shall make application immediately after such death. The application shall be accompanied by the required fee. No license shall be issued by the department under this subsection until the original license has been surrendered.

(5) A branch establishment desiring to change its name shall request such change on a form provided by the department at least thirty days prior to the designated change in name.

Source: Laws 1993, LB 187, § 21; Laws 2003, LB 242, § 99. Operative date July 1, 2004.

71-1328. Repealed. Laws 1993, LB 187, §39.

71-1329. Funeral establishments and branch establishments; inspections. The department shall make or cause to be made such inspections of funeral establishments and branch establishments as it may prescribe pursuant to rules and regulations with the approval of the board. Inspections shall be a condition of initial licensure and of license renewal.

Source: Laws 1957, c. 295, §5, p. 1061; Laws 1980, LB 94, §7; Laws 1987, LB 473, §38; Laws 1993, LB 187, §22. Operative date January 1, 1994.

71-1330. Repealed. Laws 1993, LB 187, §39.

71-1331. Funeral establishments and branch establishments; license; renewal; prohibited acts; penalty. (1) Every licensed funeral establishment and branch establishment shall pay biennially a fee for the renewal of its license. All renewal fees shall become due and payable on February 1 of each even-numbered year. Renewals shall be processed in accordance with section 71-110.

(2) Any person, partnership, limited liability company, firm, corporation, association, or other organization which (a) without having complied with sections 71-1301 to 71-1354 and without having first obtained a license (i) engages directly or indirectly in the business of funeral directing and embalming, (ii) holds himself, herself, or itself out to the public as a funeral director and embalmer, or (iii) performs or attempts to perform any of the services of a funeral establishment or branch establishment or of a funeral director and embalmer relating to the disposition of dead human bodies or (b) continues to perform such services after the license has expired or has been revoked or suspended shall be guilty of a Class III misdemeanor and shall be dealt with in the same manner as outlined in section 71-167. Each day so engaged in such business shall constitute and be deemed a separate offense.

Source: Laws 1957, c. 295, § 7, p. 1062; Laws 1973, LB 515, § 16; Laws 1977, LB 39, § 158; Laws 1980, LB 94, § 9; Laws 1986, LB 926, § 50; Laws 1988, LB 1100, § 101; Laws 1991, LB 10, § 5; Laws 1992, LB 1019, § 62; Laws 1993, LB 121, § 423; Laws 1993, LB 187, § 23; Laws 1994, LB 1223, § 33; Laws 2003, LB 242, § 100. Operative date July 1, 2004.

71-1332. Funeral establishment or branch establishment; license; revocation; reinstatement. When the license of a funeral establishment or branch establishment has been revoked for nonpayment of renewal fees, the department shall have authority to reinstate such license as provided in section 71-110.

Source: Laws 1957, c. 295, §8, p. 1063; Laws 1973, LB 515, §17; Laws 1980, LB 94, §10; Laws 1988, LB 1100, §102; Laws 1992, LB 1019, §63; Laws 1993, LB 187, §24. Operative date January 1, 1994.

71-1333. Funeral directors and embalmers and funeral establishments; license; disciplinary actions; grounds; unprofessional conduct, defined; prohibited acts; violation; penalty; section, how construed. (1) The department may deny, refuse renewal of, revoke, limit, suspend, or take other disciplinary measures against a license or an application for a license to practice funeral directing and embalming pursuant to section 71-155 if the applicant or licensee is found guilty of any of the acts or offenses specified in sections 71-147 and 71-148 or the following acts or offenses: (a) Solicitation of dead human bodies by the licensee or his or her agents, assistants, or employees, either prior to or following death; (b) the purchasing of funeral or embalming engagements or the payment of a commission either directly or indirectly or offer of payment of such commission to any agent, assistant, or employee for the purpose of securing business; (c) using indecent, profane, or obscene language in the presence of a dead human body or within the immediate presence or hearing of the family, relatives, or friends of the deceased prior to the burial of the deceased; (d) soliciting or accepting any remuneration, commission, bonus, or rebate in consideration of the recommending or causing a dead human body to be placed in any crematory, mausoleum, or cemetery; (e) using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the shipment, burial, or other disposition of a dead human body without first identifying such item as used; (f) violations of any state law, municipal ordinance, or rule or regulation of the department or other body having regulatory powers, relating to the handling, custody, care, or transportation of dead human bodies; (g) refusal to surrender promptly the custody of a dead human body upon request of a person or persons lawfully entitled to the custody thereof; or

(h) taking undue advantage of a patron or patrons, or being found guilty of fraud, or misrepresentation in the selling of merchandise or service to patrons.

(2) An applicant or a licensee shall be subject to the penalty provisions of this section if found guilty of any of the following: (a) Paying, directly or indirectly, any money or other thing of value as a commission or gratuity for the securing of business; (b) the buying of a business of any person, firm, or corporation, or the paying of a commission to any person, firm, or corporation or to any hospital or any institution where death occurs or to any hospital superintendent, nurse, intern, or other employee, whether directly or indirectly; or (c) willful malpractice. Any funeral director and embalmer who commits any of the acts or things prohibited by this section or otherwise violates any of the provisions thereof shall be guilty of a Class II misdemeanor.

(3) Nothing in this section shall be construed to prohibit a licensed funeral director and embalmer from engaging in sales of funeral goods or services under the Burial Pre-Need Sale Act.

Source: Laws 1957, c. 295, §9, p. 1063; Laws 1963, c. 411, §1, p. 1331; Laws 1980, LB 94, §11; Laws 1987, LB 473, §40; Laws 1988, LB 1100, §103; Laws 1993, LB 187, §25. Operative date January 1, 1994.

71-1333.01. Application for license; disciplinary actions; notice; hearing; procedure; appeal; director; powers; revocation or suspension; effect; reinstatement; civil penalty. (1) The department shall deny an application for a license as a funeral establishment or branch establishment, revoke or suspend a license, or refuse renewal of such a license on any of the following grounds:

(a) Conviction of any crime involving moral turpitude;

(b) Obtaining a license as a funeral establishment or a branch establishment by false representation or fraud;

(c) Operating a funeral establishment or branch establishment without a manager responsible for the operations of the establishment;

(d) A conviction of a violation of any of the provisions of sections 71-147, 71-148, 71-1301 to 71-1306, and 71-1326 to 71-1354;

(e) Unprofessional conduct, which is hereby defined to include (i) misrepresentation or fraud in the conduct of a funeral establishment or branch establishment or (ii) aiding or abetting an unlicensed person to practice funeral directing and embalming; or

(f) Violation of the rules and regulations governing the practice of funeral directing and embalming.

(2) If the department determines to deny the application for a license as or to revoke, suspend, or refuse renewal of the license of a funeral establishment or branch establishment, it shall send to the applicant or licensee, by certified mail, a notice setting forth the particular reasons for the determination. The denial, revocation, suspension, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, requests a hearing in writing. The applicant or licensee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or licensee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or licensee within such thirty-day period appeals the decision pursuant to section 71-1333.03. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations of the department.

(3) The proceeding shall be summary in its nature and triable as an equity action. Affidavits may be received in evidence in the discretion of the department. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing, the director may, through entry of an order, exercise in his or her discretion any or all of the following powers:

(a) Issue a censure against the manager;

(b) Place the manager on probation;

(c) Place a limitation or limitations on the license and upon the right of the manager to operate a funeral establishment or branch establishment to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;

(d) Impose a civil penalty not to exceed twenty thousand dollars;

(e) Enter an order of suspension of the license;

(f) Enter an order of revocation of the license; or

(g) Dismiss the action.

(4) The manager of a funeral establishment or branch establishment shall not operate such establishment after its license is revoked or during the time for which it is suspended. If a funeral establishment or branch establishment license is suspended, the suspension shall be for a definite period of time to be fixed by the director. Such license shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If such license is revoked, such

revocation shall be permanent, except that at any time after the expiration of two years application may be made for reinstatement of any manager whose funeral establishment or branch establishment license has been revoked. Such application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board.

(5) The amount of any civil penalty assessed under this section shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall within thirty days from receipt remit any collected civil penalty to the State Treasurer for credit to the permanent school fund.

Source: Laws 1993, LB 187, § 26; Laws 1996, LB 1044, § 558; Laws 1999, LB 828, § 154. Effective date August 28, 1999.

71-1333.02. Funeral establishment or branch establishment license; revocation or suspension; petition; contents; notice; hearing; order. (1) A petition for the revocation or suspension of the license of a funeral establishment or branch establishment may be filed by the Attorney General or by the county attorney in the county in which the manager resides or is operating such establishment. The petition shall be filed with the board and shall be entitled In the Matter of the Revocation (or Suspension) of the License of the Funeral Establishment or Branch Establishment (Name and establishment). The petition shall state the charges against the manager with reasonable definiteness. Upon approval of such petition by the board, it shall be forwarded to the department which shall make an order fixing a time and place for hearing thereon which shall not be less than ten days or more than thirty days after receipt. Notice of the filing of such petition and of the time and place of hearing shall be served upon the manager at least ten days before such hearing.

(2) The notice of charges referred to in subsection (1) of this section may be served by any sheriff or constable or by any person especially appointed by the department. The order of revocation or suspension of the license of a funeral establishment or branch establishment shall be entered on record, and the manager may not engage in the operation of a funeral establishment or branch establishment after revocation of the license or during the time for which it is suspended.

Source: Laws 1993, LB 187, §27. Operative date January 1, 1994.

71-1333.03. Manager; appeal rights. Any manager shall have the right of appeal from an order of the department denying, revoking, suspending, or refusing renewal of a funeral establishment license or branch establishment license. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 187, §28. Operative date January 1, 1994.

71-1334 and 71-1335. Repealed. Laws 1988, LB 1100, §185.

71-1336. Repealed. Laws 2003, LB 242, s. 154.

71-1337 and 71-1338. Repealed. Laws 1991, LB 10, §7.

71-1339. Deceased persons; control of remains; interment; liability. Except as otherwise provided in section 71-20,121, the right to control the disposition of the remains of a deceased person, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests in the following persons in the order named:

(1) Any person authorized to direct the disposition of the decedent's body pursuant to a notarized affidavit authorizing such disposition and signed and sworn to by the decedent. Such an affidavit shall be sufficient legal authority for authorizing disposition without additional authorization from the decedent, the decedent's family, or the decedent's estate. Such person shall not be considered an attorney in fact pursuant to sections 30-3401 to 30-3432;

(2) The surviving spouse of the decedent;

(3) If the surviving spouse is incompetent or not available or if there is no surviving spouse, the decedent's surviving adult children. If there is more than one adult child, any adult child, after confirmation in writing of the notification of all other adult children, may direct the manner of disposition unless the funeral establishment or crematory authority receives written objection to the manner of disposition from another adult child;

(4) The decedent's surviving parents;

(5) The persons in the next degree of kinship under the laws of descent and distribution to inherit the estate of the decedent. If there is more than one person of the same degree, any person of that degree may direct the manner of disposition;

(6) A guardian of the person of the decedent at the time of such person's death;

(7) The personal representative of the decedent;

(8) The State Anatomical Board or county board in the case of an indigent person or any other person the disposition of whose remains is the responsibility of the state or county; or

(9) A representative of an entity described in section 71-1340 that has arranged with the funeral establishment or crematory authority to cremate a body part in the case of body parts received from such entity described in section 71-1340.

A funeral director, funeral establishment, crematory authority, or crematory operator shall not be subject to criminal prosecution or civil liability for carrying out the otherwise lawful instructions of the person or persons described in this section if the funeral director or crematory authority or operator reasonably believes such person is entitled to control the final disposition of the remains of the deceased person.

The liability for the reasonable cost of the final disposition of the remains of the deceased person devolves jointly and severally upon all kin of the decedent in the same degree of kindred and upon the estate of the decedent and, in cases when the county board has the right to control disposition of the remains under subdivision (8) of this section, upon the county in which death occurred from funds available for such purpose.

Source: Laws 1959, c. 325, § 1, p. 1186; Laws 1959, c. 326, § 1, p. 1189; Laws 1998, LB 1354, § 7; Laws 1999, LB 46, § 5; Laws 2003, LB 95, § 36. Effective date August 31, 2003.

71-1340. Final disposition; instructions; remains of deceased person; disposition; liability. A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the Director of Regulation and Licensure, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the Director of Regulation and Licensure under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the Director of Regulation and Licensure shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37. Effective date August 31, 2003.

71-1341. Autopsy; written authorization; removal of organs; when performed. A written authorization for an autopsy given by the survivor or survivors, as enumerated in section 71-1339, having the right to control the disposition of remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 71-1340, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the Director of Regulation and Licensure or to any other therapeutic service operated by any nonprofit agency approved by the Director of Regulation and Licensure, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6. Effective date August 28, 1999.

71-1342 to 71-1344. Repealed. Laws 1986, LB 643, §25.

71-1345. Funeral directing and embalming; license; reciprocity. The department, upon the recommendation of the board, may issue a license to any person who has been duly licensed for at least one year to practice embalming or funeral directing in some other state providing the license from the other state was issued upon requirements which are comparable to those of Nebraska for obtaining a license to practice funeral directing and embalming. The applicant shall also provide evidence of meeting the requirements prescribed in section 71-139. The applicant shall take and pass the state jurisprudence and vital statistic forms examination with a grade of seventy-five on each examination.

Source: Laws 1980, LB 94, §16; Laws 1988, LB 1100, §104; Laws 1993, LB 187, §31. Operative date January 1, 1994.

71-1346. Funeral director and embalmer; principal services; statement of costs. A written statement, signed by the funeral director and embalmer or legal representative, of all principal services and furnishings to be supplied by the funeral director and embalmer for the preparation and burial or cremation of the deceased, together with the actual cost of the services including the total actual costs, shall be given to the next of kin or other person responsible for the making of the funeral arrangements prior to the burial or disposition of the deceased. For purposes of this section principal services shall include, but not be limited to, the casket, outer receptacle, facilities and equipment, professional services, nonlocal transportation, clothing, an itemization of all cash advances, and sales tax. A copy of such statement, signed by the person to whom it was tendered, shall be retained in the records of the funeral director and embalmer for a period of at least two years.

Source: Laws 1980, LB 94, §17; Laws 1993, LB 187, §32. Operative date January 1, 1994.

71-1347. Repealed. Laws 2002, LB 1021, §111.

71-1348. Repealed. Laws 1993, LB 187, §39.

71-1349 to 71-1353. Repealed. Laws 2002, LB 1021, §111.

71-1354. Continuing competency requirements; documentation. The board shall establish continuing competency requirements for persons licensed under sections 71-1301 to 71-1354 for adoption and promulgation by the department in rules and regulations. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 71-161.09 which a licensee may select as an alternative to continuing education. Each licensee shall submit, with his or her application for license renewal or reinstatement, documentation that he or she has completed continuing competency activities as required by the board. The department shall not renew or reinstate a license to any person who has failed to complete such requirements.

Source: Laws 1983, LB 225, § 8; Laws 2002, LB 1021, § 55. Operative date January 1, 2003.

STATUTES PERTAINING TO CREMATION OF HUMAN REMAINS ACT

71-1355. Act, how cited. Sections 71-1355 to 71-1385 shall be known and may be cited as the Cremation of Human Remains Act.

Source: Laws 2003, LB 95, § 1. Effective date August 31, 2003.

71-1356. Terms, defined. For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

- (1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;
- (2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 71-1339;
- (3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;
- (4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;
- (5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;
- (6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;
- (7) Cremation chamber means the enclosed space within which a cremation takes place;
- (8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;
- (9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;
- (10) Crematory operator means a person who is responsible for the operation of a crematory;
- (11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;
- (12) Department means the Department of Health and Human Services Regulation and Licensure;
- (13) Director means the Director of Regulation and Licensure;
- (14) Funeral director has the same meaning as in section 71-507;
- (15) Funeral establishment has the same meaning as in section 71-1301;
- (16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;
- (17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains; and

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

Source: Laws 2003, LB 95, § 2. Effective date August 31, 2003.

71-1357. Crematory; license required. A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the department under the Cremation of Human Remains Act. The department shall issue a license to a crematory authority that satisfies the requirements for licensure under the act. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under the act. Crematory authorities operating crematories on August 31, 2003, which apply for licensure within sixty days after August 31, 2003, shall be presumed to meet requirements for initial or provisional licensure under the act.

Source: Laws 2003, LB 95, § 3. Effective date August 31, 2003.

71-1358. Crematory; building and location requirements. (1) A crematory shall conform to all building codes and environmental regulations.

(2) A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

Source: Laws 2003, LB 95, § 4. Effective date August 31, 2003.

71-1359. License; application; requirements; fee. An applicant for an initial or renewal license as a crematory authority shall file a written application with the department. The application shall be accompanied by the license fee required under section 71-1363 and a certificate confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Cremation of Human Remains Act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

Source: Laws 2003, LB 95, § 5. Effective date August 31, 2003.

71-1360. License; expiration. Except as otherwise provided in the Cremation of Human Remains Act, licenses issued pursuant to the act shall expire five years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

Source: Laws 2003, LB 95, § 6. Effective date August 31, 2003.

71-1361. Crematory; change in location, ownership, or name; application; requirements; fee. (1) A crematory authority desiring to relocate a crematory shall file a written application with the department at least thirty days prior to the designated date of such relocation. The application shall be accompanied by a fee of not less than fifteen dollars and not more than one hundred fifty dollars, as determined by the department in rules and regulations.

(2) A crematory authority desiring to change ownership of a crematory shall file a written application with the department at least thirty days prior to the designated date of such change. The application shall be accompanied by a fee of not less than fifteen dollars and not more than one hundred fifty dollars, as determined by the department in rules and regulations.

(3) A crematory authority desiring to change its name shall file a written application with the department at least thirty days prior to such change. The application shall be accompanied by a fee of ten dollars.

Source: Laws 2003, LB 95, § 7. Effective date August 31, 2003.

71-1362. Provisional license. A provisional license may be issued to a crematory authority that substantially complies with requirements for licensure under the Cremation of Human Remains Act and rules and regulations adopted and promulgated under the act. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the crematory authority fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2003, LB 95, § 8. Effective date August 31, 2003.

71-1363. Licensure; fees. (1) The fee for an initial or renewal license as a crematory authority shall include a fee of three hundred dollars.

(2) If the license application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall collect the same fee as provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall collect a fee of twenty-five dollars for a certified statement that a crematory authority is licensed in this state and a fee of five dollars for verification that a crematory authority is licensed in this state.

(5) The department shall adopt and promulgate rules and regulations for the establishment of fees under the Cremation of Human Remains Act.

(6) The department shall collect fees authorized under the act and shall remit such fees to the State Treasurer for credit to the Department of Health and Human Services Regulation and Licensure Cash Fund. Such fees shall only be used for activities related to the licensure of crematory authorities.

Source: Laws 2003, LB 95, § 9. Effective date August 31, 2003.

71-1364. Department; inspection; report; duties; noncompliance; procedure. (1) The department may inspect or provide for the inspection of any crematory operated by a crematory authority licensed under the Cremation of Human Remains Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department.

(2) The department shall issue an inspection report and provide a copy of the report to the crematory authority within ten working days after the completion of an inspection. The department shall review any findings of noncompliance contained in such report within twenty working days after such inspection.

(3) If the department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act, the department may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within ten working days, and a notice that the department may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the department may take further action as provided in sections 71-1366 to 71-1369.

Source: Laws 2003, LB 95, § 10. Effective date August 31, 2003.

71-1365. Complaints; department; duties; confidentiality; immunity. (1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation relating to such complaints.

(2) A complaint submitted to the department under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the department relating to such complaint.

Source: Laws 2003, LB 95, § 11. Effective date August 31, 2003.

71-1366. Imminent danger; department; powers. (1) If the director determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, he or she may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the department. A hearing shall be held by the department no later than ten days after the date of such order. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

(2) A continuance of the hearing under subsection (1) of this section shall be granted by the department upon written request from the crematory authority. Such continuance shall not exceed thirty days.

(3) A temporary suspension or temporary limitation order by the director under this section shall take effect when served upon the crematory authority and shall not exceed ninety days. If further action is not taken by the department within such period, the temporary suspension or temporary limitation shall expire.

Source: Laws 2003, LB 95, § 12. Effective date August 31, 2003.

71-1367. Deny or refuse to renew license; disciplinary action; grounds. The department may deny or refuse to renew a license under the Cremation of Human Remains Act or take disciplinary action against a crematory authority licensed under the act as provided in section 71-1368 on any of the following grounds:

- (1) Violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act;
- (2) Conviction of any crime involving moral turpitude;

(3) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

(4) Conviction of a violation pursuant to section 71-1371;

(5) Obtaining a license as a crematory authority by false representation or fraud;

(6) Misrepresentation or fraud in the operation of a crematory; or

(7) Failure to allow access by an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such department.

Source: Laws 2003, LB 95, § 13. Effective date August 31, 2003.

71-1368. Disciplinary actions; fine; disposition. (1) The department may impose any one or more of the following types of disciplinary action against a crematory authority licensed under the Cremation of Human Remains Act:

(a) A fine not to exceed five hundred dollars per violation;

(b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;

(c) Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed two years during which the crematory may not operate; and

(e) Revocation and permanent termination of the license.

(2) Any fine imposed and unpaid under the Cremation of Human Remains Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The department shall, within thirty days after receipt, remit any such fines to the State Treasurer for credit to the permanent school fund.

Source: Laws 2003, LB 95, § 14. Effective date August 31, 2003.

71-1369. Appeal. Any party to a decision of the department under the Cremation of Human Remains Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2003, LB 95, § 15. Effective date August 31, 2003.

71-1370. License; reinstatement or relicensure. (1) If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the department and payment of the applicable fee as provided in section 71-1363.

(2) If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(3) If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in section 71-1363.

(4) If the license of a crematory authority has been suspended, such license may be reinstated by the department prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the department may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the director shall (a) grant full reinstatement of the license, (b) modify the suspension, or (c) deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases.

(5) If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until five years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such five-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2003, LB 95, § 16. Effective date August 31, 2003.

71-1371. Nuisance; abatement; acts prohibited; penalty. (1) Maintaining or operating a crematory in violation of the Cremation of Human Remains Act or any rules and regulations of the department adopted and promulgated under the act is a public nuisance and may be abated as a nuisance as provided by law.

(2) It is a Class III misdemeanor to (a) establish, operate, or maintain a crematory subject to the Cremation of Human Remains Act without being licensed as a crematory authority under the act, (b) hold oneself out to the public as a crematory

authority without being licensed under the act, or (c) perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the department or a cremation permit.

(3) Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a Class III misdemeanor.

(4) A violation of any other provision of the Cremation of Human Remains Act is a Class III misdemeanor.

Source: Laws 2003, LB 95, § 17. Effective date August 31, 2003.

71-1372. Injunction; authorized. The department may maintain an action in the name of the State of Nebraska for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under the Cremation of Human Remains Act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under the act, without alleging any further or more particular facts concerning the same.

Source: Laws 2003, LB 95, § 18. Effective date August 31, 2003.

71-1373. Cremation; right to authorize. The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 71-1339.

Source: Laws 2003, LB 95, § 19. Effective date August 31, 2003.

71-1374. Crematory authority; delivery receipt form; duties. (1) A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative.

(2) If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and constructed to (a) comply with all applicable public health laws, (b) provide for the health and safety of persons employed at such facility, and (c) prevent any unauthorized access to such facility.

(3) A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

(4) If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than twenty-four hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

Source: Laws 2003, LB 95, § 20. Effective date August 31, 2003.

71-1375. Crematory operation; limitations. (1) No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

(2) The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

Source: Laws 2003, LB 95, § 21. Effective date August 31, 2003.

71-1376. Crematory authority; operation; requirements. (1) A crematory authority shall not accept human remains for cremation without a proper label indicating the name of the deceased and the name and location of the funeral establishment placed on the exterior of the alternative container or casket.

(2) No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

(3) No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse (a) a noncombustible casket or any other container that is not an alternative container or (b) a casket or container that is not labeled as required under subsection (1) of this section.

(4) An alternative container shall:

(a) Be composed of readily combustible materials suitable for cremation;

(b) Be able to be closed to provide for complete encasement of the human remains;

(c) Be resistant to leakage or spillage;

- (d) Be rigid enough for easy handling; and
 - (e) Provide protection for the health and safety of persons handling such container.
- Source: Laws 2003, LB 95, § 22. Effective date August 31, 2003.

71-1377. Cremation authorization form; required; contents. (1) A crematory authority shall not cremate human remains until it has received:

- (a) A cremation authorization form as provided in subsection (2) of this section;
 - (b) A completed and executed permit for transit or cremation as provided by the department or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated; and
 - (c) A delivery receipt form.
- (2) A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:
- (a) The name of the deceased;
 - (b) Date and place of death;
 - (c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;
 - (d) Notification that the death did or did not occur from a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health;
 - (e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;
 - (f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;
 - (g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;
 - (h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;
 - (i) The name of the person authorized to claim the cremated remains from the crematory authority; and
 - (j) The intended disposition of the cremated remains.
- (3) A crematory authority shall retain, for at least seven years after the cremation, in printed or electronic format, copies of the cremation authorization form, permit for transit or cremation as provided by the department or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under the Cremation of Human Remains Act.

Source: Laws 2003, LB 95, § 23. Effective date August 31, 2003.

71-1378. Cremation authorization form; signature. (1) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

(2) A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

Source: Laws 2003, LB 95, § 24. Effective date August 31, 2003.

71-1379. Potentially hazardous implant or condition; jewelry or other valuables; requirements. (1) No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room or at a medical facility by appropriate medical personnel.

(2) No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who

knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

Source: Laws 2003, LB 95, § 25. Effective date August 31, 2003.

71-1380. Dispute; crematory authority or funeral establishment; powers and duties. (1) If a crematory authority or funeral establishment (a) is aware of any dispute concerning the cremation of human remains or (b) has a reasonable basis to believe that such a dispute exists or to question any of the representations made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

(2) If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

Source: Laws 2003, LB 95, § 26. Effective date August 31, 2003.

71-1381. Cremated remains; how treated. (1) In so far as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This subsection shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this subsection.

(2) The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

(3) If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

(4) If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

Source: Laws 2003, LB 95, § 27. Effective date August 31, 2003.

71-1382. Cremated remains; final disposition. (1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reasonable attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after August 31, 2003.

(2) Cremated remains shall be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

Source: Laws 2003, LB 95, § 28. Effective date August 31, 2003.

71-1383. Rules and regulations. The department may adopt and promulgate rules and regulations to implement the Cremation of Human Remains Act, to include, but not be limited to, rules and regulations establishing conditions under which human remains of persons whose death was caused by a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation, and minimum sanitation standards for all crematories.

Source: Laws 2003, LB 95, § 29. Effective date August 31, 2003.

71-1384. Crematory authority; bylaws. A crematory authority may enact reasonable bylaws not inconsistent with the Cremation of Human Remains Act for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

Source: Laws 2003, LB 95, § 30. Effective date August 31, 2003.

71-1385. Act; how construed. The Cremation of Human Remains Act shall be construed and interpreted as a comprehensive cremation law, and the provisions of the act shall take precedence over any existing laws or rules and regulations that govern human remains that do not specifically address cremation.

Source: Laws 2003, LB 95, § 31. Effective date August 31, 2003.

STATUTES PERTAINING TO DRUGS AND NARCOTICS

28-425. Embalming fluids; use of arsenic or strychnine prohibited; label required; violation; penalty. (1) No person, firm, corporation, partnership, or limited liability company shall manufacture, give away, sell, expose for sale, or deliver any embalming fluid or other fluids of whatsoever name, to be used for or intended for use in the embalming of dead human bodies, which contain arsenic or strychnine, or preparations, compounds, or salts thereof, without having the words arsenic contained herein or strychnine contained herein, as the case may be, written or printed upon a label pasted on the bottle, cask, flask, or carboy in which such fluid shall be contained.

(2) No undertaker or other person shall embalm with, inject into, or place upon any dead human body, any fluid or preparation of any kind which contains arsenic or strychnine, or preparations, compounds, or salts thereof.

(3) Any person, firm, corporation, partnership, or limited liability company violating any of the provisions of subsection (1) or (2) of this section shall be guilty of a Class III misdemeanor.

Source: Laws 1977, LB 38, §85; Laws 1993, LB 121, §176. Effective date September 9, 1993.